

STATE OF TENNESSEE



SECRETARY OF STATE

ADMINISTRATIVE PROCEDURES DIVISION

WHAT IF I REPRESENT MYSELF?

This brochure is issued for informational purposes only. Nothing contained herein shall be construed to bind the presiding Administrative Law Judge, Hearing Officer, or the Administrative Procedures Division as to any practice described herein.

February 2002

The purpose of The Administrative Procedures Division is to provide for fair, prompt, and objective hearings for persons affected by actions of certain agencies of the State of Tennessee, ensuring due process and respecting the dignity of all.

The Administrative Procedures Division (APD) is providing this pamphlet to help you prepare for your administrative hearing. This pamphlet is not a substitute for having an attorney. It is a guide which refers to the most common kinds of cases that come before the APD. However, not all cases are the same, and yours may be different.

The procedures outlined below are designed to accommodate both the short, simple case and the complex case. Many of the procedures are optional with each Judge. All cases do not proceed along exactly the same lines.

We cannot tell you about **all** possible situations that might arise. But we hope this pamphlet will help you better understand the process and prepare for your hearing.

Remember: It is very important for you to read carefully the documents sent to you by the APD and the agency. Those documents tell you the issues involved or the charges brought against you by the agency, what deadlines you must meet, and what rights you have.

HOW WILL I KNOW IF MY CASE HAS BEEN SENT TO THE APD?

When a case is sent to the APD for a hearing, the case will be assigned to a Judge. You will then be notified of the name of the Judge and the APD docket number for your case.

Department of State, Authorization No. xxxxxx, 2,500 copies, February 2002. This public document was promulgated at a cost of \$0.05 each.

The Department of State is committed to principles of equal opportunity, equal access, and affirmative action. Contact the Department of State EEO/AA Coordinator or ADA Coordinator at (615) 741-7411, Tennessee Relay Center TDD 1-800-848-0299.

WILL I HAVE A PRE-HEARING CONFERENCE?

In some cases, the Judge or one of the **parties** will want to have a pre-hearing conference to discuss the issues in the case and answer any questions there may be before the hearing. This can be done by telephone. If you want to have a pre-hearing conference, you may call the Judge to schedule one.

WHO WILL DECIDE MY CASE?

In some hearings the Judge alone will hear your case. In most of these cases the Judge's decision will not be made until sometime after the hearing. The Judge's decision will be made in a written Initial Order which will be mailed to both parties. If you are dissatisfied with the Initial Order, you have 15 days to appeal the order to the agency head before it becomes the Final Order of the agency.

In some hearings, your case will be heard by a Board or Commission that is sitting with the Judge. In this type of hearing, the Board, and not the Judge, will make the decision on your case. The Board's decision, which is called the Final Order, will be made at the close of the hearing.

CAN I CALL THE JUDGE AND TALK ABOUT MY CASE?

You may call the Judge and ask general questions about how the hearing will be conducted, but if you wish to discuss specific issues in the case, or your side of the case, it will be necessary to include the agency attorney in the conversation.

WHAT WILL MY HEARING BE LIKE?

Your hearing will be very similar to a trial in court, with witnesses, exhibits and rules of evidence. A Judge or a Hearing Officer will preside. The Judge is employed by the APD, not by the agency involved in this action. Normally, an attorney represents the agency involved. You may be represented by an attorney or you may appear on

your own behalf. It is up to you to decide whether you will retain an attorney. The APD cannot recommend an attorney for you. You may qualify for a free attorney at your local legal aid office.

When the hearing begins, each party may present an opening statement. This tells the Judge what that party intends to prove. Each party can then offer relevant evidence to prove its case. Evidence can be sworn testimony taken under oath at the hearing or it can be certain kinds of documents, such as business records. You must prove the accuracy of documents you submit. It may be helpful to get the other side to agree to the admissibility of your documents.

The person(s) or agency who files a petition or asks for a hearing is called the "Petitioner". The person or agency against whom the case is filed is called the "Respondent".

The petitioner usually presents its evidence first. The petitioner will ask questions of its witness(es) first (direct examination). When the petitioner is finished with each witness, it will be the respondent's turn to ask questions of each witness (cross-examination). The petitioner will have a second chance to ask questions on matters brought up on cross-examination (redirect) and then the respondent will have a second chance (recross).

After the petitioner has presented its witnesses, it will be the respondent's turn. The respondent may also call witnesses. As the respondent finishes with each witness, the petitioner will cross-examine. As stated before, the respondent will have a second chance to ask questions of each witness (redirect).

After the respondent's case has been presented, the petitioner may call rebuttal witnesses. Rebuttal witnesses may only testify to issues raised by the respondent. If the petitioner calls rebuttal witnesses, the respondent may be allowed to call additional witnesses to address the issues discussed by rebuttal witnesses. **Remember:** Before the

hearing closes, you must submit all the evidence you want the Judge to consider.

After all testimony has been heard, each party can make a closing argument. Usually the petitioner goes first, the respondent next. The party that goes first also has the opportunity to make a short reply argument.

Closing arguments can address only those facts brought out in testimony of witnesses or in documents received into evidence. In some cases, the Judge may want the parties to submit written argument after the hearing is over.

WHAT IS THE BURDEN OF PROOF? WHO HAS IT?

The burden of proof is the duty of a party to present evidence to demonstrate, by a preponderance of the evidence, that an allegation or fact is true. A preponderance of the evidence means the greater weight of the evidence, or the more probable conclusion based on the evidence.

The burden of proof is generally assigned to the party who seeks to change the present state of affairs with regard to any issue. Generally, if the agency is seeking to take disciplinary action against you or your license, or to take some other form of enforcement action against you, the agency will have the burden of proof.

If you are applying for a license, permit, or other benefit, you have the burden of proving that you meet the qualifications for that license, permit, or benefit.

CAN I SEE THE AGENCY'S EVIDENCE AGAINST ME BEFORE THE HEARING?

You have the right to obtain information, including a witness list, from the agency (discovery). Call or write the agency attorney and ask to see or copy the file and any other documents or relevant evidence the agency has regarding your case. You may have to pay for copies. If you have any

difficulty obtaining information, you may contact the assigned Judge for possible assistance.

IS THERE A WAY TO SETTLE THIS WITHOUT A HEARING?

Cases often settle without going to hearing. Contact the agency attorney to see if you can work your case out. It is appropriate for the parties to discuss settlement, and parties may agree to resolve a contested case by settlement at any time.

WHAT KIND OF EVIDENCE WILL I NEED FOR THE HEARING?

Depending on your case, you may want to bring witnesses who know about the issues involved. If there are documents, such as contracts, business records, or checks that help prove your side, try to bring the original and two copies. You may bring photographs or other items that are relevant to your defense. Items you want to be considered as exhibits must be left with the Judge. Any document you want to be considered by the Judge must be admissible under the Rules of Evidence.

HOW DO I GET A WITNESS TO COME TO THE HEARING? TO BRING RECORDS?

A witness can come voluntarily to the hearing. However, a subpoena protects your right to have the person present. **Remember:** The hearing is your chance to tell the Judge your side. It is important to have witnesses present at the hearing to testify.

You also have the right to subpoena individuals from businesses and government agencies to bring relevant records to the hearing. You may have to pay a fee for copying the records you are seeking.

Contact the Judge well ahead of the hearing to obtain subpoenas to compel the attendance of a person whose testimony and/or records are relevant to your case. You must arrange to serve your own subpoenas, and this can be done by certified, return receipt mail.

IS IT OK TO BRING LETTERS INSTEAD OF WITNESSES?

Ordinarily, evidence is presented through the testimony of witnesses. Some letters may be admitted into evidence for limited purposes, but generally it is better to bring witnesses who can help present your side of the case and answer any questions raised.

IF I FORGOT SOMETHING, CAN I SEND IT TO THE JUDGE LATER?

Your chance to present evidence is at the hearing. Only in rare cases will the Judge allow you to send evidence later.

WHAT IF I CAN'T BE THERE ON THE DAY SET?

You must show good cause to change a hearing date. If you cannot attend on the date and time shown, you must contact the Judge as soon as you know of the problem. To request a change of date (continuance), you may have to file a written request stating the reasons for the change. Make your request as far in advance of the hearing as possible.

WHAT IF I DON'T ATTEND?

You will likely lose your case if you do not attend. If an emergency arises on your hearing date and you will be late for the hearing, telephone the Judge at the hearing location and explain the problem. If you cannot reach the Judge at that location, call the APD and explain the problem.

CAN I APPEAL THE FINAL ORDER OF THE AGENCY?

You have sixty (60) days to appeal the agency's Final Order to the Chancery Court in Davidson County.

CAN I OBTAIN A TRANSCRIPT (WRITTEN RECORD) OF THE HEARING?

Yes, but you must generally pay the cost of preparing the transcript.

WILL THE HEARING LOCATION BE ACCESSIBLE TO PEOPLE WITH DISABILITIES?

Hearing locations are to be accessible to persons with disabilities. However, check in advance with the APD or the agency.

In addition, if you know persons who plan to attend that have special needs requiring reasonable accommodation, please contact the APD or the agency as soon as possible, so arrangements can be made.

GENERAL INFORMATION

The hearings conducted by the APD are governed by the Uniform Administrative Procedures Act, Tennessee Code Annotated Title 4, Chapter 5, as well as the Uniform Rules of Procedures for Hearing Contested Case Hearings Before State Administrative Agencies, Rule Chapter 1360-4-1. Copies of these laws and rules may be obtained from the APD.

The Administrative Procedures Division is located at the following address:

**312 Eighth Avenue North
8th Floor, Wm. R. Snodgrass Tower
Nashville, Tennessee 37243
The telephone number is (615) 741-7008
The fax number is (615) 741-4472**

Finally: All contested case hearings are given a docket (identification) number. This will appear in the upper right-hand corner of all documents you receive from the APD. You must use this number on all correspondence or filings.

If you are appearing without an attorney, you must keep the APD informed of your current mailing address and telephone number.